

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2018

CORAM :

THE HONOURABLE MR.JUSTICE N. SESHASAYEE

A.S.No.665 of 2016

1. The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Chennai
 2. The Superintending Engineer,
Tamil Nadu Electricity Board,
Mettur.
 3. The Executive Engineer/
Operation and Maintenance,
Tamil Nadu Electricity Board,
Namakkal.
 4. The Assistant Engineer/
Operation and Maintenance,
Tamil Nadu Electricity Board,
Valaiyapatti.
- .. Appellants
- Vs.
1. Tmt.Rajeswari
 2. Kiruthiga
 3. Vignesh
 4. Punithra
- .. Respondents

[Minors R2 to R4 declared as major
and R1 discharged from guardianship
vide order of this Court dated 16.07.2018
made in C.M.P.Nos.16051 to 16056 of 2017
in A.S.No.665 of 2016 by NSSJ].

Prayer :

This Appeal Suit is filed under Section 96 of the Code of Civil Procedure, 1908 against the Judgment and Decree dated 18.02.2010 in O.S. No.43 of 2006 on the file of the Additional District Judge at Namakkal (Fast Track Court, Namakkal).

For Appellants	:	Mr.V.Viswanathan
For Respondents	:	Mrs.R.Meenal

JUDGMENT

1. The appellants herein are the defendants in O.S.No.43 of 2006 on the file of the District Court at Namakkal (Fast Track Court, Namakkal). The suit is laid for damages seeking compensation for the death of a certain Gunasekaran, due to electrocution stated to have resulted in consequent to the negligence of the appellants. Parties would be referred to by their rank before the Court below.

2. On 26.04.2000, at about 6.00 p.m., Gunasekaran had gone to his agricultural property, and on his return home at around 10.00 p.m., a high tension electric cable had snapped and lay on the ground without any caution or warning, and Gunasekaran, while on his way back home stepped on it and died. Alleging that the accident had occasioned solely due to the negligence of the appellants in maintaining its electric-lines, and claiming that Gunasekaran was an L.I.C. agent and was earning Rs.10,000/- per month, his wife and the three minor children have sought Rs.10,00,000/- as compensation with an interest at the rate of 12% per annum.

3. In the written statement, the fourth defendant had denied the accident and denied negligence on the part of the Tamil Nadu Electricity Board. Contrary to the allegation in the plaint, the electrical line involved was not high-tension electrical lines, but was a low tension line, and that they are maintained well. However, on the fateful day due to heavy rains coupled with severe wind, the said electrical line had snapped, and Gunasekaran was negligent in stepping on the electrical line. The snapping of the electrical line was due to the Act of God, and the defendants would be no way responsible for the same. The monthly income of the deceased as stated too was exaggerated.

4. Before the Trial Court, the first plaintiff was examined as PW1, and for the defendants, an official of the Electricity Board was examined as D.W.1. In order to prove the avocation of the deceased, plaintiffs had produced Exts.A4 and A5. However, for want of any material evidence for proving accurately the actual monthly income of the deceased, the Trial Court has notionally fixed the same at Rs.4,000/- and determined the total compensation payable at Rs.7,04,000/- with interest at the rate of 6% per annum. This decree is now under challenge.

5. Point for consideration:

1. Was not the accident due to the negligence of the appellant?
2. Whether the compensation awarded was irrational.

6. The learned counsel for the appellants argued that it is

an admitted case even according to the plaintiffs that there were rains on the fateful night and despite best of care, human efforts can never defy the forces of nature and hence the act of nature can never be deflected on the appellants and be labelled as their negligence. Secondly, with no material evidence to support the monthly income of the deceased, the Trial Court was in error in adopting Rs.4,000/- as monthly income. At any rate, in adopting 22 as multiplier is on the higher side and it should have limited to 15 which is a multiplier which the Hon'ble Supreme Court has declared in Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. [2009(2) TN MAC 1 (SC)] in cases of claim under the Motor Vehicles Act,.

7. Per Contra, the learned counsel for the respondents / plaintiffs submitted that it is a case of pure tort, where there is no statutory guide for determining compensation, and to that extent, Sarla Verma case or any formula prescribed in any other statute for quantifying the compensation can only be a guide, but it does not bind the Court in quantifying unliquidated damages payable in cases of tortious liability. Secondly, it is the duty of the Electricity Board to anticipate all the factors that might visit while laying the electric lines and thereby exposing the public to the danger of its possible snapping. If there is inadequacy in anticipating the accident such as this, then it is given to the appellants to shift the blame on nature, and attempt to escape liability.

8. After weighing the rival contentions, and on perusing the available evidence, this Court struggles to convince itself on the merit of the arguments advanced in support of the appellants. When once one deals with anything dangerous which has the potentiality of leaving extreme consequences to one who is exposed to that then the standard of care required to be taken by the former shall be supreme. The duty to care is not constant and it is proportionate to the danger which may visit in case such duty fails. Electricity generally does not give options to its victims, and except where providence interferes to save one, a victim invariably perishes. Therefore, it is incumbent upon the Electricity Board to maintain its electrical lines with utmost care, and in so doing, it is also ought to have expected that natural forces too may operate on the overhead electric lines that it has laid.

9. Act of God, a defence taken by the appellants to hide their negligence under the carpet, if it were to exempt a tortfeasor from liability, shall be of such nature and magnitude that it defies the anticipation of men of ordinary prudence, that any just and ordinary care taken to avert an anticipated accident is proved to be too inadequate to deal with the situation. This cannot be extended to the most obvious

situations where right to care is within the reach of ordinary anticipation. A tsunami or an earth quake, or the floods or a gale fall in this category. Some may be anticipated, but the consequence that they may unleash can hardly be predicted, and they may be termed as Acts of God, and not the one at hand.

10. So far as the quantification of damages is concerned, any method prescribed under any other statute for providing compensation may be a rule of convenience but it may be considered as an inviolable rule of the thumb. The Court may have to look into varieties of factors other than the income in determining it. So, this Court does not find the compensation amount awarded by the trial court is arbitrary or excessive. Even if the multiplier applied is considered on the higher side, still this Court believes that the monthly income as reckoned by the court below is well on the lower side. Ultimately, it is reworking of few arithmetical factors internally, and therefore this Court does not want to tinker with the compensation awarded by the Trial Court.

11. In the end, this Court does not find any merits in the appeal and the same is dismissed. In the given circumstances, there will be no order as to costs. The learned counsel for the appellants submitted that already 50% of the compensation amount along with interest has been paid before the Trial Court. The respondents are now free to withdraw the same forthwith. So far as the remaining 50% of the award amount is concerned, the appellants are directed to deposit the same within a period of eight weeks from the date of receipt of a copy of this judgement.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssn / hvk

To

1. The Additional District Judge at Namakkal (Fast Track Court, Namakkal).

+1cc to Mr.V.Viswanathan , Advocate, S.R.No.56743
+1cc to Mrs.R.Meenal, Advocate, S.R.No.57047

A.S.No.665 of 2016

KS (CO)
CS/06/09/18